

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

May 13, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

STATEWIDE

SUBJECT: RECOMMENDATION FOR FINAL APPROVAL FOR
ADOPTION OF RULE AMENDMENT TO CHAPTER 13-231,
SECTION 13-231-26 HAWAII ADMINISTRATIVE RULES, AS
RELATING TO ALLOWING ONE PERSONAL PARTNER TO
RESIDE ON THE PRINCIPLE OWNERS VESSEL.

PURPOSE Amend Hawaii administrative rules to allow one personal partner
the ability to reside on the principle owner's vessel with in State
Small Boat Harbors, adding the personal partner category to the
current allowable residents of: vessel owner, vessel co-owner,
spouse and their legal dependents.

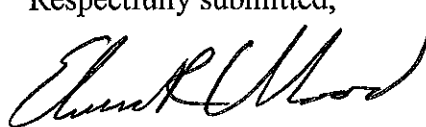
REMARKS The American Civil Liberties Union has contacted the Department
with inquiries concerning the subject HAR section with respect to
residents at State Small Boat Harbors. The Hawaii Administrative
Rules (HAR) that pertain to harbor resident permits currently do
not allow alternative, personal partners to reside at small boat
harbors. A "personal partner" is an individual considered to be a
"significant other" of the principal habitation permittee who is not
a relative by biology or adoption to the principle habitation
permittee. While living together on the vessel, the principal
habitation permittee and personal partner shall not have a landlord-
tenant relationship. The department shall retain the right to limit
the total number of people allowed to live on a particular vessel
based on reasonable health, safety, security, or environmental
concerns for persons on the vessel, other permittees at the harbor,
public use of the harbor, or the harbor itself, and may deny the
issuance of a harbor resident permit if such issuance would exceed
the limit determined by the department to be appropriate.

This amendment will allow one personnel partner to live on their significant others vessel. At this point, the vessel owner, vessel co-owner, spouse and their legal dependents are the only permitted residents under the existing rule.

RECOMMENDATION

- 1) That the Board approve and adopt the amendment to Chapter 13-231, Section 13-231-26 Hawaii Administrative Rules, and compilation, with revisions and as per administrative rulemaking procedures, forward them to the Governor's Office for final approval and filing with the Office of the Lieutenant Governor.
- 2) That these final proposed changes be submitted, in final form, to Office of the Attorney General for review before they are submitted to the Governor's Office.
- 3) All other changes or conditions as may be prescribed by the Chairperson to best serve the interest of the State be incorporated into these amendments.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL:



Laura H. Thielen
Chairperson and Member

RAMSEYER DRAFT

(5/13/10)

Rules Amending Title 13

Hawai'i Administrative Rules

May 13, 2010

1. Chapter 231 of Title 13, Hawai'i Administrative Rules, entitled "OPERATION OF BOATS, SMALL BOAT HARBORS, AND PERMITS" is amended and compiled to read as follows:

"HAWAI'I ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART I SMALL BOAT HARBORS

CHAPTER 231

OPERATION OF BOATS, SMALL BOAT HARBORS, AND PERMITS

HAWAII ADMINISTRATIVE RULES

CHAPTER 231

OPERATION OF BOATS, SMALL BOAT HARBORS, AND PERMITS

Historical note

Subchapter 1 Use of Small Boat Harbors

- §13-231-1 General statement and restrictions on mooring dormant vessels
- §13-231-2 Agreement for the use of small boat harbor property, facilities, and offshore
- §13-231-3 Use permits; issuance
- §13-231-4 Use permits; part-time or intermittent occupancy
- §13-231-5 Period of validity and renewal of use permit
- §13-231-6 Revocation of use permit
- §13-231-7 Assignment and reassignment of moorings and vessel storage space
- §13-231-8 Inspections
- §13-231-9 Cancellation of use permit
- §13-231-10 Removal of a vessel or contrivance
- §13-231-11 Absence of vessel for more than fourteen days; effect on permits
- §13-231-12 Discontinuance of service
- §13-231-13 Joint and several liability; non-transferability of use permits
- §13-231-14 Sale of abandoned vessels or to collect delinquent fees
- §13-231-15 Boat owner required to report change of ownership, address, and other changes
- §13-231-16 Numbers or other vessel identification
- §13-231-17 Mooring prohibited except at assigned locations
- §13-231-18 Vessel reconstruction
- §13-231-19 Salvage
- §13-231-20 Houseboats prohibited

- §13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and Keehi boat harbors
- §13-231-22 Staying aboard transient or visiting vessels
- §13-231-23 Interim use of berth during temporary absence of regular permittee's vessel
- §13-231-24 Interim use of berth pending occupancy by regular permittee
- §13-231-25 Exchange of berths
- §13-231-26 Use of vessel as a place of habitation
- §13-231-27 Allocation of principal habitation permits
- §13-231-28 Staying aboard vessels moored at Ala Wai or Keehi boat harbors
- §13-231-29 Vessel used as a vacation site
- §13-231-30 Restrictions on multiple permits
- §13-231-31 Administrative hearing
- §13-231-32 Rules of evidence; official notice
- §13-231-33

to

- §13-231-39 (Reserved)

Subchapter 2 Boat Operation

- §13-231-40 General statement
- §13-231-41 Navigation or mooring vessels in small boat harbor
- §13-231-42 Interference with navigation
- §13-231-43 Pilotage
- §13-231-44 Vessel loading zone
- §13-231-45 Marine inspections
- §13-231-46 Vessel limitations
- §13-231-47

to

- §13-231-49 (Reserved)

Subchapter 3 Commercial Activities

- §13-231-50 General statement
- §13-231-51 Business activities
- §13-231-52 Solicitations and advertisements
- §13-231-53 Signs
- §13-231-54 Commercial vessel; definition
- §13-231-55 Berthing commercial vessels at Ala Wai and Keehi boat harbors
- §13-231-56 Definitions, gross receipts
- §13-231-57 Berthing or using commercial vessels in state small boat harbors; signs and other structures
- §13-231-58 Limitations on the number of commercial permits for vessels assigned permanent moorings
- §13-231-59 Limitations on commercial permits for vessels moored elsewhere
- §13-231-60 Allocation of commercial permits for vessels
- §13-231-61 Renewal of commercial permits
- §13-231-62 Transferability of commercial permits
- §13-231-63 Retention of berth upon termination of commercial permit
- §13-231-64 Fees and charges
- §13-231-65 Insurance requirements
- §13-231-66 Limitation on number of berths held by a commercial permittee
- §13-231-67 Limitations on commercial permits issued for the use of state boat launching ramps
- §13-231-68 Signs and other structures at a state small boat harbor
- §13-231-69 Multiple use of mooring facilities by commercial vessels
- §13-231-70 Water taxi operations
- §13-231-71
to
- §13-231-75 (Reserved)

Subchapter 4 Special Area Rules

§13-231-76 Kewalo Basin

§13-231-77 Ala Wai Canal

§13-231-78

to

§13-231-79 (Reserved)

Subchapter 5 Allocation of Berths

§13-231-80 General

§13-231-81 Application for a berth; seniority of application; period of validity; renewal of application

§13-231-82 Review and acceptance, or rejection of applications

§13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes

§13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn

§13-231-85 Priority and procedures in allocation of berths

§13-231-86 Categories of berths; priority of allocation

§13-231-87 Notice to owner of available berth

§13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of acceptance

§13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance

§13-231-90 Offer of category I (breakwater) berth- Ala Wai small boat harbor

Historical note. This chapter is based on use of small boat harbors, boat operation, commercial activities, special area rules, allocation of berths of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94]

Section 13-231-26, Hawaii Administrative Rules, is amended to read as follows:

§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi boat harbor may use that vessel as a place of principal habitation if the owner has applied for and secured:

(1) A principal habitation permit; and

(2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai boat harbor:

(1) Berths 23 through 79;

(2) The area leased to the Waikiki Yacht Club;

(3) The area leased as a marine fueling facility;

(4) The area leased to Ala Wai Marine, Ltd; and

(5) The moorings adjacent to the breakwater.

(d) A vessel owner may utilize the owner's vessel as a place

of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit and harbor resident permit issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one personal partner of each, and their legal dependents may be issued a harbor resident permit. A "personal partner" is an individual considered to be a "significant other" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.

The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittees at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a harbor resident permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi boat harbor shall be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its moorings shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11.

[Eff 2/24/94; _____] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)